

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 673 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI CHHAGAN MULU

Versus

STATE OF GUJARAT

Appearance:

MR KG VAKHARIA, Sr. Advocate with Mr. Tushar Mehta
for Petitioner
MR YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 15/01/97

ORAL JUDGEMENT: (Per Pandya, J.)

1. Two accused were facing charge under Section 302 and 307 read with Section 34, all of I.P.C. and, in the alternative, individually also, on the date of the trial of Sessions Case No.90 of 1986. The learned Additional Sessions Judge, Bhavnagar, by judgment and order dated 7.7.1988 acquitted accused No.1 of all the charges and

convicted accused No.2 for offence punishable under Section 302 and Section 324, I.P.C. and sentenced to suffer imprisonment for life for the offence under Section 302. Though accused No.2 is convicted under Section 324, I.P.C., no separate sentence is awarded.

2. On 29.5.1986, at about 3.00 P.M., the complainant-Puna Jetha was approached by both the accused while he was sleeping on a hanging board out side office room of Aashra Saw Mill. He was made to get up by the accused and, thereafter, he was about to be belaboured. By that time, deceased Madha Chithar happened to pass by and he saw that accused No.2 was coming with a knife and, therefore, he intervened. He also saw accused No.2 giving knife blow to the complainant-Puna Jetha and accused No. 1 catching hold of the complainant. Madha Chithar, therefore, gave a stick blow on the leg of accused No.1 and that is how Puna Jetha came to be saved. However, accused No.2 went to the deceased and by just one blow on the back of the deceased, which pierced his lung and brought about his death within an hour or so. The prosecution has given the aforesaid case before the Trial Court and the charge accordingly was framed, whereby the two accused stood trial for the aforesaid offences. However, the story brought out by the defence is not as simple as it was tried to be put by the prosecution witnesses.

3. It has been consistent story of the defence that the incident happened not outside Aashra Saw Mill, but inside its office room and it was the complainant party, which has started the quarrel and, in the process, this thing happened. The accused had received injury and was treated at the same hospital where Eye-witness-Puna Jetha was treated. However, eye-witness-Puna Jetha, during his cross-examination, has denied any knowledge of accused No.1 having received any injury. The injury was serious in nature because it had resulted in fracture of Tibia.

4. The story brought out in cross-examination from the witness included a cross-case. This has been clearly established in the deposition of the Investigating Officer Mr. Dolubha, P.W.10, Ex.45, at page 97. In his cross-examination, he says that, against Puna Jetha, at the instance of accused No.2 a complaint was filed which resulted in to Sessions Case No.91 of 1986 and the present case out of the same incident.

5. Further, in paragraph 3 of the cross-examination of this witness, it has been brought out that the incident happened in the room of the said saw mill and

not outside on the road as tried to be made out by the witness.

6. Puna Jetha in his deposition has denied his own version that on the fateful day on two earlier occasions, he had verbally quarrelled with accused No.1, which by way of contradiction has been proved in paragraph 4 of the deposition of the said Police Officer.

7. Thus, it is a case of quarrel simmering between the two sides which finally resulted into the aforesaid outburst at about 3.00 P.M. in which accused No.1 received an injury. It was tried to be made out on behalf of the State before us and that argument has impressed the learned Trial Judge very much. The story of self-defence may hold good so far as the injury caused to Puna Jetha is concerned but not to the blow given to deceased-Madha Chithar. The reason given by the learned Trial Judge is that Madha Chithar is merely an intervenor. However, in our opinion, the learned Trial Judge has lost sight of the blow given to the right leg of accused No.1 by none other than Madha Chithar and, according Puna Jetha, the stick which was carried by Madha Chithar was used to cause the injury. The stick was thus wielded by Madha Chithar and had caused fracture of the right tibia. Under the circumstances, the act of Chhagan, in our opinion, is clearly an exercise of defence. At the same time, in no manner he can exceed the right to exercise defence. Therefore, the conviction under Section 302 is required to be modified to that under Section 304 and the sentence undergone by the accused is enough. We are not discussing the aspect of sentence under Section 324 as only 18 months rigorous imprisonment was awarded in respect of offence under Section 324. There period is already over.

8. In the result, the appeal is partly allowed. The conviction under Section 302 is modified to that under Section 304. So far as the sentence is concerned, whatever that the accused has undergone is enough. He is, therefore, ordered to be released forthwith, if not required for any other purpose. The learned Sessions Judge shall not insist upon execution of bond by the accused-appellant.